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5 ANDINA PROPERTY LLC,
6 Plaintiff,
7 v.
8 LAURA-ELIZABETH FOX, et al.
9 Defendants.

Case No. [21-cv-06608-AGT](#)

**ORDER TO SHOW CAUSE RE:
LACK OF SUBJECT-MATTER
JURISDICTION**

Re: Dkt. Nos. 1, 4

10 This matter was opened and assigned to the undersigned after Laura Fox and Beth Fox re-
11 moved two related cases to federal court. Both cases were filed in California Superior Court by
12 Andina Property LLC, an entity that purchased, in a foreclosure sale, property once owned by the
13 Foxes. In the first case, Andina sued the Foxes for unlawful detainer after they refused to leave the
14 property. *See* Dkt. 1-1 at 1-10. In the second, Andina petitioned for a writ of mandate, seeking a
15 writ that would require the Sheriff of San Francisco to remove the Foxes from the premises.

16 This is the third time that the Foxes or someone on their behalf has removed the first case.
17 *See Andina Property LLC v. Fox*, 20-cv-00320-PJH (JSC); *Andina Property LLC v. Fox*, 19-cv-
18 06168-JCS. On both prior occasions, the case was remanded to state court due to a lack of federal
19 subject-matter jurisdiction. After a district court remands a case, the defendant may file another
20 removal petition only “when subsequent pleadings or events reveal a new and different ground for
21 removal.” *Kirkbride v. Cont'l Cas. Co.*, 933 F.2d 729, 732 (9th Cir. 1991) (simplified). Here, no
22 new and different ground for removal has been identified, *compare* Dkt. 1 at 3-5, *with* 19-cv-06168-
23 JCS, Dkt. 1 at 2-4, so once again federal subject-matter jurisdiction is lacking.

24 As for the second case, the petition for a writ of mandate,¹ the Foxes base federal subject-
25 matter jurisdiction on 28 U.S.C. §§ 1331, 1332, and 1333. None of these sections apply.

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27 ¹ In California, a petition for a writ of mandate, “unlike a postjudgment motion,” is “an independent proceeding
28 that vests the [state] trial court with jurisdiction to act.” *People v. Picklesimer*, 48 Cal. 4th 330, 339
(2010).

1 *Section 1331:* District courts have jurisdiction over civil actions “arising under” federal law.
 2 28 U.S.C. § 1331. But the petition for a writ of mandate doesn’t arise under federal law; it arises
 3 under state law. *See Cal. Civ. Proc. Code § 1085.* The Foxes say the petition arises under federal
 4 law because they intend to invoke various federal laws in defense. That isn’t good enough, however,
 5 because a case “may *not* be removed to federal court on the basis of a federal defense.” *City of*
 6 *Oakland v. BP PLC*, 969 F.3d 895, 904 (9th Cir. 2020) (quoting *Caterpillar Inc. v. Williams*, 482
 7 U.S. 386, 393 (1987)).

8 *Section 1332:* District courts have jurisdiction over civil actions between citizens of different
 9 states if the amount in controversy exceeds \$75,000. *See 28 U.S.C. § 1332(a)(1).* When proceeding
 10 under § 1332, the removing party must satisfy both the citizenship and amount-in-controversy re-
 11 quirements. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018); *Kanter v.*
 12 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Here, putting aside the amount in contro-
 13 versy, the Foxes haven’t met their burden of establishing diversity of citizenship. They haven’t “al-
 14 lege[d] affirmatively the actual citizenship of the relevant parties.” *Kanter*, 265 F.3d at 857.

15 *Section 1333:* District courts have jurisdiction over admiralty and maritime cases, and over
 16 proceedings involving prizes brought into the United States. *See 28 U.S.C. § 1333.* But the petition
 17 for a writ of mandate doesn’t fit within any of these categories.

18 Because subject-matter jurisdiction is lacking, the undersigned intends to refer the Foxes’
 19 cases to a district judge with a recommendation that the cases be remanded to state court. Before
 20 taking that step, the undersigned will permit the Foxes to respond to this order, explaining why their
 21 cases shouldn’t be remanded. Their response is due by December 20, 2021.²

22 **IT IS SO ORDERED.**

23 Dated: December 6, 2021



ALEX G. TSE
United States Magistrate Judge

27 ² Before the date of this order, the Foxes filed a “motion to enforce the automatic stay.” Dkt. 4. That motion
 28 is denied without prejudice. The Foxes may refile it if they demonstrate that the Court has subject-matter
 jurisdiction.